

**OKLAHOMA STATE DEPARTMENT OF HEALTH  
ADMINISTRATIVE PROCEDURES MANUAL**

**NUMBER:** 6-1A  
**TITLE:** Family Medical Leave and Military Family Leave  
**ADOPTED:**  
**LAST REVIEWED:** October 2011  
**RESPONSIBLE SERVICE:** Human Resources

**APPROVED:** \_\_\_\_\_  
Terry Cline, Ph.D.  
Commissioner of Health

**I. Purpose**

The purpose of this administrative procedure is to provide a uniform and consistent process by which individuals apply for Family Medical Leave in accordance with the Federal Family and Medical Leave Act of 1993 (FMLA), the provisions of the National Defense Authorization Act of 2008 as it applies to active duty leave and caregiver leave, the Uniformed Services Employment and Reemployment Rights Act, and Merit Rules for Employment. [29 USC § 2601 et seq.; 29 CFR §825 et seq.; 74 O.S. § 840-2.22; and Merit Rule 530:10-15-45]

Benefits are provided to eligible employees in accordance with the FMLA of 1993 as amended by the National Defense Authorization Act of 2008. It allows job-protected leave without pay for up to a total of 12 weeks in a 12-month period for any FMLA qualifying event or a total of 26 weeks in a 12-month period for military caregiver leave. The state of Oklahoma allows employees to account for FMLA leave by using accrued annual leave, sick leave, shared leave if eligible to receive shared leave, and accrued compensatory time. If no other paid leave is available the employee will be on leave without pay.

**II. Definitions and Process**

**A. Definitions**

1. "Child" means biological, adopted, or foster child, stepchild, a legal ward, or a child of a person standing in *loco parentis* (in place of a parent) and who is either under age 18 or age 18 or older and is incapable of self-care because of a mental or physical disability at the time FMLA leave is to commence. [FMLA 825.122(c)]
2. "Eligible Employee" means an OSDH employee employed by the state of Oklahoma for at least 12 months and has worked a minimum of 1,250 hours in the preceding 12-month period. For the purpose of this administrative procedure, the calculation of the mandated 1,250

hours of “time worked” does NOT include holidays, paid or unpaid leave. An employee on active military duty receives credit for the hours and months he or she would have worked but for the employee’s military service.

3. “FML” means family medical leave. FML is a designation given to the type of absence and is independent of actual leave charged to cover the absence.
4. “FML Notice” is the process by which a supervisor informs an employee of his or her eligibility, rights, and responsibilities pursuant to the FMLA.
5. “FMLA” means Family and Medical Leave Act.
6. “Healthcare Provider” means a doctor of medicine or osteopathy who is authorized to practice by the state in which the person practices or any other person determined by the U.S. Secretary of Labor to be capable of providing healthcare services which include, but are not limited to podiatrists, dentists, clinical psychologists, clinical social workers, optometrists, nurse practitioners, physician assistants, etc. [FMLA 825.125(a)]
7. “Incapable of Self Care” means an individual requires active assistance or supervision in activities of daily living such as caring appropriately for one's grooming and hygiene, bathing, dressing, eating, cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, and using telephones or a post office.
8. “Intermittent Leave” means leave taken one hour, one day or several days at a time, such as for chemotherapy or whenever medically necessary to care for a covered service member with a serious injury or illness. FMLA leave may also be taken intermittently for a qualifying exigency arising out of the active duty status or call to active duty of a covered military member. [FMLA 825.202(d) and Merit Rule 530:10-15-45]
9. “Loco Parentis” means those persons with day-to-day responsibilities to care for and financially support a child or in the case of an employee, who had such responsibility for the employee when the employee was a child. A biological or legal relationship is not necessary.
10. “Medical Certification” means the attending health care provider's documented medical facts specifying the anticipated duration of

incapacity or episodes of incapacity if a chronic condition, treatments and regimen of continued treatment, physical limitations to performing job functions, anticipated absences due to the condition and/or treatments, approximation of assistance an employee may have to provide a family member, etc.

11. “Medical re-certification” means renewal of the attending health care provider’s documented medical facts specifying the anticipated duration of incapacity or episodes of incapacity if a chronic condition, treatments and regimen of continued treatment, physical limitations to performing job functions, anticipated absences due to the condition and/or treatments, approximation of assistance an employee may have to provide a family member, etc. **Recertification is not applicable for military caregiver leave.** [FMLA 825.310(d)]
12. “Military Caregiver Leave” means leave entitlement of up to 26 weeks (1,040) hours in a 12-month period for eligible employees who are the spouse, son, daughter, parent, or next of kin of covered servicemembers who are current members of the regular Armed Forces, including the National Guard or Reserves, with a serious illness or injury incurred in the line of duty on active duty.
13. “Parent” means a biological, adoptive, step or foster parent or an individual who stood in loco parentis to an employee when the employee was a child. [FMLA 825.122(b)]
14. “Physical care” includes situations where, due to a serious health condition, the family member is unable to care for his or her own, or a qualified individual’s, basic medical, hygienic, or nutritional needs or safety. [FMLA 825.127(a) and Merit Rule 530:10-15-45(c)]
15. “Preliminary qualifying event” means an event may qualify for FML, but supporting documentation (evidence of adoption, military orders, written documentation of a contingency, etc.) is required to definitively make the determination.
16. “Psychological care” includes situations where, due to a serious health condition requiring inpatient or home care, the family member would benefit from psychological comfort.
17. “Qualifying Exigency Leave” means leave entitlement of up to 12 weeks (480) hours in a 12-month period for eligible employees with a covered military member serving on active duty or call to active duty status in support of a contingency operation as either a member of the reserve components (Army Corps Reserves, Air

National Guard of the United States, Air Force Reserve and Coast Guard Reserve), or retired member of the Regular Armed Forces or reserve. An employee whose family member is on active duty or called to active duty status in support of a contingency operation as a member of the Regular Armed Forces is not eligible to take leave because of a qualifying exigency. Qualifying exigencies include: [FMLA 825.126(i)]

- a. Short notice deployment;
- b. Military events and related activities;
- c. Childcare or school activities;
- d. Financial and legal arrangements;
- e. Counseling;
- f. Rest and recuperation. Eligible employees may take up to five work days for each period of rest and recuperation;
- g. Post deployment activities; and
- h. Additional activities. [FMLA 825.126]

18. “Qualifying event” includes:

- a. The birth of an employee’s child and to care for the newborn child provided the leave concludes within one year of the child’s birth; both mother and father are entitled to a combined total of 12 weeks of FMLA leave in a single 12-month period, beginning on the date of birth. [FMLA 825.120(2)]
- b. Receiving custody of a child through adoption or foster care placement provided the leave concludes within one year of the placement of the child;
- c. An employee caring for his or her spouse, child or parent who is incapable of self-care due to a serious health condition; or
- d. Serious health condition that renders the employee unable to perform his or her essential job functions.
- e. Qualifying exigencies arising out of the fact that the employee’s spouse, son, daughter, or parent is on active duty or call to active duty status as a member of the National Guard

or Reserves in support of a contingency operation; or [Merit Rule 530:10-15-45 (5)]

- f. In the case of Military Caregiver Leave, an eligible employee who is the spouse, son, daughter, parent or next of kin of a covered service member shall be entitled to a total of up to 26 weeks of leave during a 12-month period to care for the servicemember. During the 12-month period an eligible employee shall be entitled to a combined total of 26 weeks of leave. [Merit Rule 530:10-15-45(c)]
19. “Reduced Leave Schedule” means leave that is taken in conjunction with reduced work hours for an employee who is recovering from a serious health condition and is not strong enough to work a full-time schedule or for other FML qualifying absences.
20. “Serious Health Condition” means an illness, injury impairment, or physical or mental condition that involves one of the following:
- a. Any period of incapacity or treatment connected with inpatient care in a hospital, hospice, or residential medical care facility;
  - b. Multiple treatments by a healthcare provider, including any period of recovery, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment (e.g., chemotherapy, radiation, physical therapy and dialysis);
  - c. Any period of incapacity of more than three consecutive calendar days that also involves continuing treatment under the supervision of a healthcare provider; or
  - d. Continuing treatment under the supervision of a health care provider for a chronic or long term health condition that is incurable or so serious that, if not treated, would likely result in a period of incapacity of more than 3 consecutive calendar days (e.g., asthma, diabetes, Alzheimer’s, or the terminal stages of a disease, etc.); and
  - e. Prenatal care. [FMLA 825.115]

Unless inpatient hospital care is required or unless complications develop, exclusions to serious health conditions include cosmetic treatments, the common cold, the flu, earaches, upset stomach,

minor ulcers, headaches other than migraine, routine dental or orthodontia problems, and periodontal disease. [FMLA 825.113(d)]

21. "Spouse" means a husband or wife as defined or recognized under State law for purposes of marriage in the state where the employee resides, including common law marriage in states where it is recognized.

22. "To care for" includes both physical and psychological care.

## **B. Process**

### **1. Using Family Medical Leave**

#### **a. Employee Responsibility**

Whenever possible, an employee should schedule FMLA leave to accommodate OSDH operations. For qualifying absences, an eligible employee shall:

- (1) Complete and submit to his or her supervisor a "Family and Medical Leave Request Form" (Attachment A, ODH 999) or a "Military Family Leave Request" (Attachment B, ODH 1000) at least 30 days before commencement of leave. If the need for FML is unforeseeable, the employee shall immediately verbally notify his or her supervisor as soon as practicable, taking into account all the facts and circumstances of the individual case. [Merit Rule 530:10-15-45(g)]
- (2) Upon receipt of the leave request, submit any other supportive documentation, such as evidence of adoption or foster care, birth certificate, military orders, written documentation of contingency operation, etc.
- (3) Provide documentation of medical certification via a completed "Certification of Health Care Provider for Employee's Serious Health Condition (WH-380-E)," "Certification of Health Care Provider for Family Member's Serious Health Condition (WH-380-F)," "Certification of Qualifying Exigency for Military Family Leave (WH-384)," or "Certification for Serious Injury or Illness of Covered Service Member for Military Family Leave (WH-385)," prior to the date leave begins when foreseeable but no later than 15 calendar days after requested by the supervisor. These forms are available at the following links:

<http://www.dol.gov/whd/forms/wh-380-e.pdf>  
<http://www.dol.gov/whd/forms/WH-380-F.pdf>  
<http://www.dol.gov/whd/forms/WH-384.pdf>  
<http://www.dol.gov/whd/forms/WH-385.pdf>

- (4) Provide his or her supervisor with periodic reports if requested.

b. Supervisor Responsibility

Upon receipt of each leave request, the supervisor shall consult with Human Resources and:

- (1) Within two working days upon receipt of the request for FMLA leave, complete the supervisory portion of the leave request form, forward to Human Resources, and provide the employee with a copy of this administrative procedure absent extenuating circumstances.
- (2) Approve FML qualifying absences, when the employee has submitted all required documentation. If the determination is made that the employee is not eligible for FML, the reasons must be specified.
- (3) Not interfere with, restrain or deny the exercise of any right provided by the FMLA or this policy.
- (4) The supervisor will not designate leave as FML leave retroactively except in consultation with Human Resources within two days of the employee's return to work.

c. Human Resources Responsibility

Human Resources shall:

- (1) Indicate on the leave request form if the absence is a qualifying event, or is designated as a preliminary qualifying event, and that the employee was provided a "Designation Notice" (WH 382) within five business days. The notice is available at:

<http://www.dol.gov/whd/forms/WH-382.pdf>

- (2) If applicable, Human Resources shall require the employee to complete a "Certification of Health Care Provider for

Employee's Serious Health Condition (Form WH-380-E)" or "Certification of Health Care Provider for Family Member's Serious Health Condition (Form WH-380-F)," "Certification of Qualifying Exigency for Military Family Leave (Form WH-384)," or "Certification for Serious Injury or Illness of Covered Service Member for Military Family Leave (Form WH-385)."

d. Medical Certification

- (1) At the supervisor's request, Human Resources may contact the health care provider for purposes of clarification and authentication of the medical certification (whether initial certification or recertification) after the employee has been given the opportunity to cure any deficiency. Under no circumstances may the employee's direct supervisor contact the employee's healthcare provider.
- (2) Human Resources shall maintain all FML related documentation in a confidential file separate from the employee's personnel file.
- (3) OSDH may not request medical re-certification more often than every 30 days unless circumstances described in the previous certification have changed significantly or if there is information that casts doubt upon the employee's stated reason for the absence. Medical re-certification may only be requested in connection to the referenced condition causing the absence, unless there are significant changes in the employee's or family member's health condition, a change in healthcare provider, or the supervisor receives information contradicting the employee's stated reason for the absence. Medical recertification is not required for Military Caregiver Leave.

2. Leave Charges

Family and Medical Leave is not a separate type of leave, and it is not accrued or accumulated.

- a. If an absence is eligible for FML designation, an employee may charge an absence to any of the following options:
  - (1) Charge to accrued annual leave;
  - (2) Charge to accrued sick leave;



- (3) Charge to leave donated by other state employees under Section 840-2.23 of Title 74 of the Oklahoma Statutes, which is also known as “shared leave,” if approved in accordance with OSDH Administrative Procedure 6-1 entitled, “Working Hours and Leave”;
  - (4) Charge to accumulated compensatory time; or
  - (5) Record as leave without pay in accordance with Merit Rule 530:10-15-47.
- b. If an employee is eligible for a paid holiday while on family and medical leave, that leave must also be designated as FML leave. However, if an employee is using FML leave in increments of less than one week, the holiday will not count against the employee’s FMLA entitlement unless the employee was otherwise scheduled and expected to work during the holiday. [FMLA 825.200(h)]
- c. Work-related absences may also be eligible for FML designation. An employee may be on a worker’s compensation absence due to work-related injury or illness which also qualifies as a serious health condition under FMLA. The workers’ compensation absence and FML leave may run concurrently. [FMLA 825.702(d)(2)]
- d. The use of FML may not exceed 12 weeks (480 hours) in any “rolling” 12-month period. A “rolling” 12-month period is measured backward from the date the employee uses any FML.
- e. An eligible employee may take consecutive, intermittent, or reduced leave schedule for a FML qualifying event.
  - (1) The employee must submit a "Family and Medical Leave Request Form" (Attachment A, ODH 999) or a “Military Family Leave Request” (Attachment B, ODH 1000) for each absence designated as FML.
  - (2) The Commissioner or designee may assign an employee who is on a FML intermittent leave or reduced leave schedule to an alternate position with equivalent pay and benefits, if the alternate position would better accommodate the leave and the needs of the agency.
  - (3) The supervisor has the responsibility to review requests for

sick leave and leave without pay for designation as family and medical leave.

Human Resources has the right to designate leave taken for an FML qualifying event as FML leave, regardless of whether the employee has requested FML leave.

Human Resources' designation decision shall be based only on information provided by the employee or the employee's spokesperson. In accordance with the Federal Family and Medical Leave Act, Human Resources shall not designate leave as Family and Medical Leave retroactively, unless Human Resources has sufficient information concerning the employee's reason for taking the leave until after the leave period has begun. [Merit Rule 530:10-15-45(h)]

### **III. Insurance Premiums**

While an employee is on FML, OSDH shall continue to pay the employee and dependent's benefit allowance portion of the group health insurance premium.

The employee is responsible for paying his or her remaining group insurance premium. If an employee remains on leave without pay after exhausting FML, he or she will be responsible for paying the entire group insurance premium. Failure to maintain premiums will result in coverage being terminated.

Failure of an employee to return to work at the conclusion of FML will subject the employee to liability for all insurance premiums paid by OSDH.

### **IV. Return to Work**

Intent to return to work at the conclusion of FML--Unless waived by the supervisor (after consultation with HR) if the qualifying absence is due to a health condition that prevented the employee from performing the essential functions of his or her job, the employee must provide a statement from his or her healthcare provider verifying fitness-for-duty.

Upon return from family and medical leave, an employee shall have the right to be restored to the same or equivalent position and benefits, except for extension of his or her anniversary date for longevity pay, leave accrual, and calculation of retention points, he or she would have had if the employee had been continuously employed in pay status during the leave period. [Merit Rule 530:10-15-45(k)]

### **V. Non-compliance**

Non-compliance with this administrative procedure will subject an employee to disciplinary action absent mitigating circumstances, up to and including termination in accordance with Administrative Procedures 6-16 entitled, “Progressive Discipline,” and 6-16A entitled, “At-Will Employee Disciplinary Actions.”

## **VI. Posting**

All OSDH work locations will post “Employee Rights and Responsibilities Under the Family and Medical Leave Act” (Attachment C) in places where employees may reasonably be expected to see it.

## **VII. References**

Family and Medical Leave Act of 1993 (FMLA) 825.113(d), 825.115, 825.120(2), 825.122(b), 825.122(c), 825.125(a), 825.126, 825.126(i), 825.127(a), 825.200(h), 825.202(d), 825.310(d), and 825.702(d)(2)

National Defense Authorization Act of 2008

Uniformed Services Employment and Reemployment Rights Act

29 USC §2601 et seq.;

29 CFR §825 et seq.;

Title 74 O.S. §840-2.22 and 840.2.23

Merit Rules 530:10-15-45, 530:10-15-45(c), 530:10-15-45(5), 530:10-15-45(g), 530:10-15-45(h), 530:10-15-45(k), and 530:10-15-47

## **VIII. Action**

The Chief Operating Officer is responsible for ensuring the annual review of this administrative procedure.

Human Resources is responsible for the annual review and revisions.

Any exception to this procedure will require prior written approval from the Commissioner.

This procedure is effective as indicated.

**IX. Attachments**

<u>Attachments</u>	<u>Title</u>	<u>Location</u>
Attachment A	Family and Medical Leave Request (ODH 999)	Attached
Attachment B	Military Family Leave Request (ODH 1000)	Attached
Attachment C	Employee Rights and Responsibilities Under the Family and Medical Leave Act	Attached

**OKLAHOMA STATE DEPARTMENT OF HEALTH FAMILY AND MEDICAL LEAVE REQUEST**

Full Name of Employee (Please Print):	Employee ID:	Work Location:
<b>REASON FOR REQUEST</b>		
I am requesting family and medical leave pursuant to the Family and Medical Leave Act of 1993 and Merit Rule 530:10-15-45 for the following reason: <input type="checkbox"/> Birth of my son or daughter and to care for the newborn child. <input type="checkbox"/> Placement of a son or daughter for adoption or foster care with me <input type="checkbox"/> Care for my spouse, son, daughter, or parent (name and relationship provided below) with a serious health condition  Name: _____ Relationship: _____ Describe the care you will provide: _____ _____  <input type="checkbox"/> Serious health condition		
<b>LEAVE ELECTION</b>		
I am electing the following leave option(s) in accordance with Merit Rule 530:10-15-45 to cover family and medical leave absence: (Please number the options in the order in which you plan to use. Contact Human Resources if you do not wish to exhaust any balance prior to changing leave programs): <input type="checkbox"/> Sick <input type="checkbox"/> Annual <input type="checkbox"/> Compensatory <input type="checkbox"/> Leave Without Pay <input type="checkbox"/> Shared Leave *If approved and balance available		
Anticipated/Actual Date FMLA Request Begins:	Ends:	
Is this a request for intermittent leave? <input type="checkbox"/> Yes <input type="checkbox"/> No   If yes, please describe:		
I certify that during said period I was, or will be, unable to perform my duties for the reason(s) indicated.		
Employee Signature	Date	
Supervisor Signature	Date	
<b>HUMAN RESOURCES SECTION</b>		
<input type="checkbox"/> <b>Approved</b> through (Date):		
<input type="checkbox"/> <b>Denied</b> because: <input type="checkbox"/> Employee is not eligible <input type="checkbox"/> Document was not submitted or does not support FMLA use		
<input type="checkbox"/> Yes or <input type="checkbox"/> No Certification Received <input type="checkbox"/> Yes or <input type="checkbox"/> No Certification Waived <input type="checkbox"/> Yes <input type="checkbox"/> No   The above referenced employee is eligible for FMLA: Employment with the state for 12 months; worked (including any period of military leave) a minimum of 1,250 hours in the 12 months preceding the date leave commences; has not exhausted the 12 week limit during the 12 months preceding the date leave commences; has leave balances to cover the leave elections.		
Benefits Coordinator Signature	Date	
Commissioner or Designee Signature	Date	

Copy to Supervisor for Forwarding to Employee and Copy to Employee's FMLA File  
 Administration  
 Human Resources

OKLAHOMA STATE DEPARTMENT OF HEALTH MILITARY FAMILY LEAVE REQUEST

Full Name of Employee (Please Print):	Employee ID:	Work Location:
<b>REASON FOR REQUEST</b>		
<p>I am requesting <b>military</b> family leave pursuant to the National Defense Authorization Act of 2008, Section 585(a) and Merit Rule 530:10-15-45 for the following reason:</p> <p><input type="checkbox"/> Qualifying exigency arising out of the fact that my spouse, son, daughter, or parent is on active duty or has been notified of an impending call to active duty status, in support of a contingency operation (support documentation is required and attached or will be provided within _____ days).</p> <p><input type="checkbox"/> Care for my spouse, son, daughter, parent or next of kin who is a covered service member (name and relationship provided below) who is recovering from a serious illness/injury sustained in the line of duty on active duty (certification is required and attached or will be provided within ____ days unless waived by the commissioner or designee).</p> <p>Name: _____ Relationship: _____</p> <p>Describe the care you will provide: _____</p> <p>_____</p>		
<b>LEAVE ELECTION</b>		
<p>I am electing the following leave option(s) in accordance with Merit Rule 530:10-15-45 to cover military family leave absence: (Please number the options in the order in which you plan to use. Contact Human Resources if you do not wish to exhaust any balance prior to changing leave programs):</p> <p><input type="checkbox"/> Sick <input type="checkbox"/> Annual <input type="checkbox"/> Compensatory <input type="checkbox"/> Leave Without Pay <input type="checkbox"/> Shared Leave *If approved and balance available</p>		
Anticipated/Actual Date MFMLA Request Begins:	Ends:	
<p>Is this a request for intermittent leave? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, please describe:</p>		
I certify that during said period I was, or will be, unable to perform my duties for the reason(s) indicated.		
Employee Signature	Date	
Supervisor Signature	Date	
<b>HUMAN RESOURCES SECTION</b>		
<p><input type="checkbox"/> <b>Approved</b> through (Date):</p> <p><input type="checkbox"/> <b>Denied</b> because: <input type="checkbox"/> Employee is not eligible <input type="checkbox"/> Document was not submitted or does not support MFMLA use</p>		
<b>DESIGNATION OF LEAVE</b>		
<p><input type="checkbox"/> Yes or <input type="checkbox"/> No Certification Received</p> <p><input type="checkbox"/> Yes or <input type="checkbox"/> No Certification Waived</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No The above referenced employee is eligible for MFMLA: Employment with the state for 12 months; worked (including any period of military leave) a minimum of 1,250 hours in the 12 months preceding the date leave commences; has not exhausted the 12 week limit (qualifying exigency) or the 26 week limit (military caregiver) during the 12 months preceding the date leave commences; has leave balances to cover the leave elections.</p>		
Benefits Coordinator Signature	Date	
Commissioner or Designee Signature	Date	

Copy to Supervisor for Forwarding to Employee and Copy to Employee's FMLA File  
Administration  
Human Resources



## EMPLOYEE RIGHTS AND RESPONSIBILITIES UNDER THE FAMILY AND MEDICAL LEAVE ACT

### Basic Leave Entitlement

FMLA requires covered employers to provide up to 12 weeks of unpaid, job-protected leave to eligible employees for the following reasons:

- For incapacity due to pregnancy, prenatal medical care or child birth;
- To care for the employee's child after birth, or placement for adoption or foster care;
- To care for the employee's spouse, son or daughter, or parent, who has a serious health condition; or
- For a serious health condition that makes the employee unable to perform the employee's job.

### Military Family Leave Entitlements

Eligible employees with a spouse, son, daughter, or parent on active duty or call to active duty status in the National Guard or Reserves in support of a contingency operation may use their 12-week leave entitlement to address certain qualifying exigencies. Qualifying exigencies may include attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain counseling sessions, and attending post-deployment reintegration briefings.

FMLA also includes a special leave entitlement that permits eligible employees to take up to 26 weeks of leave to care for a covered servicemember during a single 12-month period. A covered servicemember is a current member of the Armed Forces, including a member of the National Guard or Reserves, who has a serious injury or illness incurred in the line of duty on active duty that may render the servicemember medically unfit to perform his or her duties for which the servicemember is undergoing medical treatment, recuperation, or therapy; or is in outpatient status; or is on the temporary disability retired list.

### Benefits and Protections

During FMLA leave, the employer must maintain the employee's health coverage under any "group health plan" on the same terms as if the employee had continued to work. Upon return from FMLA leave, most employees must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms.

Use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of an employee's leave.

### Eligibility Requirements

Employees are eligible if they have worked for a covered employer for at least one year, for 1,250 hours over the previous 12 months, and if at least 50 employees are employed by the employer within 75 miles.

### Definition of Serious Health Condition

A serious health condition is an illness, injury, impairment, or physical or mental condition that involves either an overnight stay in a medical care facility, or continuing treatment by a health care provider for a condition that either prevents the employee from performing the functions of the employee's job, or prevents the qualified family member from participating in school or other daily activities.

Subject to certain conditions, the continuing treatment requirement may be met by a period of incapacity of more than 3 consecutive calendar days combined with at least two visits to a health care provider or one visit and a regimen of continuing treatment, or incapacity due to pregnancy, or incapacity due to a chronic condition. Other conditions may meet the definition of continuing treatment.

### Use of Leave

An employee does not need to use this leave entitlement in one block. Leave can be taken intermittently or on a reduced leave schedule when medically necessary. Employees must make reasonable efforts to schedule leave for planned medical treatment so as not to unduly disrupt the employer's operations. Leave due to qualifying exigencies may also be taken on an intermittent basis.

### Substitution of Paid Leave for Unpaid Leave

Employees may choose or employers may require use of accrued paid leave while taking FMLA leave. In order to use paid leave for FMLA leave, employees must comply with the employer's normal paid leave policies.

### Employee Responsibilities

Employees must provide 30 days advance notice of the need to take FMLA leave when the need is foreseeable. When 30 days notice is not possible, the employee must provide notice as soon as practicable and generally must comply with an employer's normal call-in procedures.

Employees must provide sufficient information for the employer to determine if the leave may qualify for FMLA protection and the anticipated timing and duration of the leave. Sufficient information may include that the employee is unable to perform job functions, the family member is unable to perform daily activities, the need for hospitalization or continuing treatment by a health care provider, or circumstances supporting the need for military family leave. Employees also must inform the employer if the requested leave is for a reason for which FMLA leave was previously taken or certified. Employees also may be required to provide a certification and periodic recertification supporting the need for leave.

### Employer Responsibilities

Covered employers must inform employees requesting leave whether they are eligible under FMLA. If they are, the notice must specify any additional information required as well as the employees' rights and responsibilities. If they are not eligible, the employer must provide a reason for the ineligibility.

Covered employers must inform employees if leave will be designated as FMLA-protected and the amount of leave counted against the employee's leave entitlement. If the employer determines that the leave is not FMLA-protected, the employer must notify the employee.

### Unlawful Acts by Employers

FMLA makes it unlawful for any employer to:

- Interfere with, restrain, or deny the exercise of any right provided under FMLA;
- Discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA.

### Enforcement

An employee may file a complaint with the U.S. Department of Labor or may bring a private lawsuit against an employer.

FMLA does not affect any Federal or State law prohibiting discrimination, or supersede any State or local law or collective bargaining agreement which provides greater family or medical leave rights.

**FMLA section 109 (29 U.S.C. § 2619) requires FMLA covered employers to post the text of this notice. Regulations 29 C.F.R. § 825.300(a) may require additional disclosures.**



For additional information:  
1-866-4US-WAGE (1-866-487-9243) TTY: 1-877-889-5627  
[WWW.WAGEHOUR.DOL.GOV](http://WWW.WAGEHOUR.DOL.GOV)

U.S. Department of Labor | Employment Standards Administration | Wage and Hour Division



WHD Publication 1420 Revised January 2009